

without issue, the proceeds of sale shall be considered as real estate, and shall descend to those heirs who would be entitled to the land if it had not been sold. (n)

There is every reason to believe, that these public and general acts of Assembly, which it is proposed by this petition to have put in execution, were passed in consequence of the numerous applications which had been previously made to the Legislature for authority, by special estate acts, so to dispose of the property of infants, as most judiciously and effectually to maintain and educate them; and in order to turn over to the courts of justice a class of cases which, evidently, belong more properly to the judicial than to the legislative department of the government. But these laws, like some others of no less utility and importance, lay open to the most latitudinous construction, and pernicious application; and therefore require to be carefully considered, and in each case very guardedly carried into effect. (o)

By virtue of the power of *eminent domain*, which belongs to ours as to all other governments, private property may be taken for public use, on a just compensation being made. But it may be safely assumed, that the Legislature can, by no act, take the property of an adult citizen from him and give it to another, for any purpose, with or without compensation; and that no adult citizen can be compelled to use, apply, or alienate his property in any way whatever merely with a view to his own benefit and advantage. The holding and the application of private property, at the pleasure of its owner, so it be not as a nuisance or made injurious to others, according to the fundamental principles of our government, are rights so absolute, that no power in the land can touch or control them in any degree whatever. Infants, it is clear, hold their property by the same kind of absolute and uncontrollable rights as adults. It is the duty of the state to protect all her citizens; but more especially her infants, for whom she is bound to provide maintenance and education, in case they should be without parents or pecuniary means. The state has a deep interest in the proper maintenance and education of her infants; and, consequently, it must be within the constitutional competency of her government to make any legal provision necessary to facilitate the application of the property of infants to such purposes, as well for her own

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(n) 1816, ch. 154; 1818, ch. 133, s. 2, and ch. 193, s. 7, 12 and 13; 1819, ch. 183; *Tilly v. Tilly*, 2 Bland, 436.—(o) *Waring v. Waring*, 2 Bland, 673.